



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 25, 2013

Ms. Ashley D. Dierker
Counsel for the City of Haltom City
Taylor, Olson, Adkins, Sralla, Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107

OR2013-04828

Dear Ms. Dierker:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 486347.

The City of Haltom City (the "city"), which you represent, received two requests for information pertaining to a specified incident. You claim the submitted information is exempted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes a press release which the city seeks to withhold under section 552.108 of the Government Code. Section 552.007 of the Government Code provides that if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further public disclosure unless release of the information is prohibited by law or the information is confidential under law. *See Gov't Code 552.007*; Open Records Decision No. 518 at 3 (1989). Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 586 (1991) (governmental body may waive section 552.108).* As such, section 552.108 neither prohibits public disclosure of information nor makes information confidential under law. Thus, because the city has previously made the submitted press

release, which we have marked, available to the public, it may not be withheld under section 552.108 and must be released pursuant to section 552.0007 of the Government Code.

Next, we note the remaining information includes a search warrant subject to section 552.022 of the Government Code. Section 552.022(a)(17) provides for the required public disclosure of “information that is also contained in a public court record,” unless it is “made confidential under [the Act] or other law[.]” Gov’t Code § 552.022(a)(17). Although you raise section 552.108 of the Government Code for this information, as previously noted, this is a discretionary exception to disclosure that may be waived and does not make information confidential under the Act. *See id.* § 552.007; ORDs 665 at 2 n.5, 663 at 5, 586. As such, section 552.108 does not make information confidential for the purposes of section 552.022(a), and the city may not withhold the search warrant, which we have marked, on that basis. Accordingly, the city must release the marked search warrant pursuant to section 552.022(a)(17) of the Government Code.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the remaining information relates to a pending criminal investigation. Based on your representation and our review, we conclude release of the remaining information would interfere with the detection, investigation, or prosecution of a crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, section 552.108(a)(1) of the Government Code is applicable to the remaining information.

We note section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.¹

In summary, the city must release the press release we have marked pursuant to section 552.007 of the Government Code. The city must release the search warrant we have marked pursuant to section 552.022(a)(17) of the Government Code. With the exception of

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

basic information, the city may withhold the remaining information under section 552.108(a)(1) of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/ag

Ref: ID# 486347

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)